

THE FOREIGN INTELLIGENCE SURVEILLANCE ACT
OF 1978
(H.R. 7308)

FACT SHEET

Status:

H.R. 7308 is currently scheduled for floor action before the summer recess. The bill was developed by Attorney General Levi during the Ford Administration and improved by Attorney General Bell after close consultation with the intelligence community and members of Congress. Under the leadership of Senators Kennedy, Thurmond, Bayh, and Garn the Senate counterpart of this bill (S. 1566) was passed on April 20, 1978 by a vote of 95-1. H.R. 7308 is strongly supported by the Attorney General, the Secretary of Defense, the Director of Central Intelligence, the Director of NSA, and the Director of the FBI.

Purpose:

1. The bill will remove any doubt about the legality of electronic surveillance in the United States for foreign intelligence purposes. This will facilitate intelligence collection by assuring FBI field agents and others involved in these activities that their acts are authorized by statute and, if a U.S. person's communications are concerned, by a court order.
2. It will clarify the executive's authority to gather foreign intelligence by electronic surveillance in the United States. The few court decisions in this area do not accomplish this with anything approaching the precision of this legislation. The current state of ambiguity hinders intelligence activities. Legitimate governmental action against foreign espionage and international terrorism is sometimes curtailed due to doubts concerning legality.
3. It will reassure the American people that their privacy will be protected by appropriate standards and procedures for foreign intelligence electronic surveillance, established by Congress in a public law.
4. It is a carefully designed, thoroughly considered bill that has the support of the intelligence agencies that must function under it and of those groups that have been most concerned about the proper use of electronic surveillance for foreign intelligence purposes. The bill strikes the proper balance between the vital interest of protecting the national security and protecting the civil liberties of U.S. persons.

Provisions of the Bill:

The bill requires a prior judicial warrant for all electronic surveillance for foreign intelligence or counterintelligence (including international terrorism) purposes in the United States in which there is a possibility that a communication of U.S. persons might be intercepted. A House Intelligence Committee amendment requires only Attorney General

approval, as opposed to a court order, for surveillances which cover communications exclusively between or among official foreign power entities.

The bill authorizes the Attorney General to apply for an order approving the use of electronic surveillance to a Special Court composed of federal district court judges designated by the Chief Justice. Standards for granting such orders are set forth in the bill. The bill requires the Court to operate under tight security procedures established in consultation with the Attorney General and the Director of Central Intelligence.

An order will issue upon a finding of probable cause to believe that the target of the surveillance is a "foreign power" or an "agent of a foreign power." A "foreign power" includes a foreign government, a faction of a foreign government, a group engaged in international terrorism, a foreign-based political organization, or an entity controlled by a foreign government. Non-resident alien officers, members, or employees of foreign powers are "agents of a foreign power."

A U.S. person may be an "agent of a foreign power" if engaged in clandestine intelligence activities on behalf of a foreign power which involve or may involve a federal criminal violation. This is the so-called criminal standard -- the requirement that before a U.S. person can be surveilled there must exist some nexus between the activities forming the basis for the surveillance and a violation of the criminal law. This provision has its greatest impact on the FBI and the Bureau is convinced that it is a significant improvement over prior versions of the bill.

Surveillance of U.S. persons and non-official foreign powers must be reauthorized after ninety days. Where the target of a surveillance is an official foreign power, less detailed information is required to be submitted to the court and surveillance may continue for up to one year before reapproval.

The bill requires "minimization procedures" to limit the acquisition, retention, and dissemination of irrelevant information concerning U.S. persons.

The bill requires the House and Senate Intelligence Committees to be provided sufficient information for oversight purposes and also requires periodic statistical reporting.

Justice

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